

EX. 14

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JARI MCPHERSON, JERALD)
SAMS, AND DANIEL MARTINEZ,)
)
 Plaintiffs,)
) CIVIL ACTION
VS.)
) NO.: 1:20-cv-01223-DAE
TEXAS DEPARTMENT OF PUBLIC)
SAFETY,)
)
 Defendant.)

REMOTE ORAL DEPOSITION OF

GABRIEL ORTIZ

FEBRUARY 13, 2023

REMOTE ORAL DEPOSITION OF GABRIEL ORTIZ, produced
as a witness at the instance of the PLAINTIFFS, and
duly sworn, was taken in the above-styled and
numbered cause on February 13, 2023, from 3:01 p.m.
to 5:33 p.m., via Zoom, before Vanessa J. Theisen,
CSR in and for the State of Texas, reported by
machine shorthand, pursuant to the Federal Rules of
Civil Procedure and any provisions stated on the
record or attached hereto.

<p style="text-align: right;">42</p> <p>1 A. Are you asking who -- who got that position?</p> <p>2 Q. Yes, sir.</p> <p>3 A. So there was a couple of people that -- one</p> <p>4 person actually promoted at the time, a Luis Verdeja,</p> <p>5 and then we had a couple of people on an eligibility</p> <p>6 list, which is good for a year, and if there's a</p> <p>7 vacancy that comes up open somewhere in my region,</p> <p>8 they will be contacted and asked if they are</p> <p>9 interested in filling that position.</p> <p>10 So next on the list after Lieutenant</p> <p>11 Verdeja was Rick Soforo, and then after that I</p> <p>12 believe it was a Marco Castaneda, and then after that</p> <p>13 it was Nate Head.</p> <p>14 Q. So are you reading a document here as you're</p> <p>15 testifying?</p> <p>16 A. I am not. That was off the top of my head.</p> <p>17 Q. Okay. Very good. I'm impressed. And none</p> <p>18 of those people were obviously McPherson. None of</p> <p>19 them. The standbys or the promoted person, right?</p> <p>20 A. That is correct.</p> <p>21 Q. And the promoted person was Verdeja. Do you</p> <p>22 recall or did you look into it enough to contrast for</p> <p>23 me, let's say, the qualifications, experience, and</p> <p>24 leadership of Mr. Verdeja as compared with my client?</p> <p>25 A. Yes, I did.</p>	<p style="text-align: right;">44</p> <p>1 working out of that Houston office, he developed a</p> <p>2 significant amount of experience in the several years</p> <p>3 that he was a special agent.</p> <p>4 Q. Okay. But without the 113 in front of you,</p> <p>5 I guess it would be fair to say that you can't</p> <p>6 presently be specific about what Lieutenant Verdeja</p> <p>7 learned in Houston or what his experiences were?</p> <p>8 A. Right. I -- I can't be specific, but I can</p> <p>9 tell you I do recall it was a significantly amount --</p> <p>10 or significant more experience than Agent McPherson.</p> <p>11 And that's just not something that I decide on my</p> <p>12 own.</p> <p>13 There's a board, an interview board that</p> <p>14 consists of board members, and everybody unanimously</p> <p>15 agreed that that was -- Lieutenant Verdeja was the</p> <p>16 top candidate.</p> <p>17 Q. And did you express the opinion, Major, that</p> <p>18 you wanted Lieutenant Verdeja selected?</p> <p>19 A. Did I express the opinion?</p> <p>20 Q. Did you say, "Hey, I want him"?</p> <p>21 A. No, that's not how that works.</p> <p>22 Q. Well, I know it's not supposed to be that</p> <p>23 way, but I'm asking you if you did it?</p> <p>24 A. No, sir, I did not.</p> <p>25 Q. Did you express any opinion about Lieutenant</p>
<p style="text-align: right;">43</p> <p>1 Q. And would you agree with me that McPherson</p> <p>2 had more experience as a leader of employment -- of</p> <p>3 personnel, of police personnel, than Mr. Verdeja?</p> <p>4 MR. HARRIS: Object to the form of the</p> <p>5 question.</p> <p>6 Q. (BY MR. SCHULMAN) The objection that's been</p> <p>7 interposed, I don't think it came with an instruction</p> <p>8 to you, sir, not to answer, so I'm -- I'm looking for</p> <p>9 your answer.</p> <p>10 A. Gotcha. So, no, I -- I would disagree with</p> <p>11 you on that. Lieutenant Verdeja had a significant</p> <p>12 amount, significant more experience than Agent</p> <p>13 McPherson.</p> <p>14 Q. And what kind of experience did Verdeja</p> <p>15 have?</p> <p>16 A. So I -- without looking at his, what's</p> <p>17 called a 113, which is a document that's required by</p> <p>18 all personnel to complete, he provided some specific</p> <p>19 examples about his investigative experience. Also,</p> <p>20 you have to provide examples of how you demonstrated</p> <p>21 certain competencies such as leadership, problem</p> <p>22 solving skills, investigative skills, and all those</p> <p>23 different things.</p> <p>24 And so I don't have that in front of me,</p> <p>25 but I can tell you right now that his experience</p>	<p style="text-align: right;">45</p> <p>1 Verdeja to the board?</p> <p>2 A. There may have been some opinion about his</p> <p>3 113 looked good or his interview went well, but those</p> <p>4 are things that are mentioned during the board</p> <p>5 process for each candidate.</p> <p>6 Q. Okay. And who did you say was the last</p> <p>7 standby, the last person that might get promoted, was</p> <p>8 it --</p> <p>9 A. Nathaniel Head. Nate Head.</p> <p>10 Q. Nathaniel Head. Was Nathaniel Head a</p> <p>11 relatively new employee?</p> <p>12 A. Yes.</p> <p>13 Q. Would you agree with me that his experience</p> <p>14 was no -- nowhere near comparable to McPherson's?</p> <p>15 MR. HARRIS: Object to the form of the</p> <p>16 question.</p> <p>17 A. That's probably accurate, John, but that's</p> <p>18 not the only thing we consider or take in</p> <p>19 consideration when we're promoting somebody to a</p> <p>20 position.</p> <p>21 Q. (BY MR. SCHULMAN) So what -- well, what was</p> <p>22 it about Nathaniel Head that made him a better</p> <p>23 candidate to be on a standby list for promotion than</p> <p>24 McPherson? It wasn't his tenure, I understand, so it</p> <p>25 must have been something else. What was it?</p>

<p>1 MR. HARRIS: All right. We'll reserve</p> <p>2 our questions for trial and ask that the witness be</p> <p>3 given an opportunity review and sign the transcript.</p> <p>4 MR. SCHULMAN: Okay. I was right.</p> <p>5 (Deposition concluded at 5:33 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	86	<p>1 I, GABRIEL ORTIZ, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 GABRIEL ORTIZ</p> <p>7 THE STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9 Before me, _____, on this day</p> <p>10 personally appeared GABRIEL ORTIZ, known to me (or</p> <p>11 proved to me under oath or through _____)</p> <p>12 (description of identity card or other document) to</p> <p>13 be the person whose name is subscribed to the</p> <p>14 foregoing instrument and acknowledged to me that he</p> <p>15 executed the same for the purposes and consideration</p> <p>16 therein expressed.</p> <p>17</p> <p>18 Given under my hand and seal of office, this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC IN AND FOR</p> <p>23 THE STATE OF _____</p> <p>24 My commission expires: _____</p> <p>25 _____ No Changes Made _____ Amendment Sheet(s) Attached</p>	88
<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: GABRIEL ORTIZ</p> <p>3 DATE OF DEPOSITION: FEBRUARY 13, 2023</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	87	<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF TEXAS</p> <p>3 AUSTIN DIVISION</p> <p>4 JARI MCPHERSON, JERALD)</p> <p>5 SAMS, AND DANIEL MARTINEZ,)</p> <p>6)</p> <p>7 Plaintiffs,)</p> <p>8) CIVIL ACTION</p> <p>9 VS.)</p> <p>10) NO.: 1:20-cv-01223-DAE</p> <p>11 TEXAS DEPARTMENT OF PUBLIC)</p> <p>12 SAFETY,)</p> <p>13)</p> <p>14 Defendant.)</p> <p>15 REPORTER'S CERTIFICATION OF THE REMOTE ORAL</p> <p>16 DEPOSITION OF GABRIEL ORTIZ</p> <p>17 FEBRUARY 13, 2023</p> <p>18 I, Vanessa J. Theisen, a Certified</p> <p>19 Shorthand Reporter in and for the State of Texas,</p> <p>20 hereby certify to the following:</p> <p>21 That the witness, GABRIEL ORTIZ, was duly</p> <p>22 sworn by the officer and that the transcript of the</p> <p>23 oral deposition is a true record of the testimony</p> <p>24 given by the witness;</p> <p>25 That the original deposition was delivered</p> <p>to Mr. Drew Harris to obtain witness's signature.</p> <p>That a copy of this certificate was served</p> <p>on all parties and/or the witness shown herein on</p> <p>March 1, 2023.</p> <p>I further certify that pursuant to FRCP</p> <p>Rule 30(3) that the signature of the deponent:</p>	89

1 XX_ was requested by the deponent or a
2 party before the completion of the deposition and
3 that the signature is to be before any notary public
4 and returned within 30 days from date of receipt of
5 the transcript.

6 If returned, the attached Changes and
7 Signature Page contains any changes and the reasons
8 therefore:

9 _____ was not requested by the deponent or
10 a party before the completion of the deposition.

11 I further certify that I am neither
12 counsel for, related to, nor employed by any of the
13 parties or attorneys in the action in which this
14 proceeding was taken, and further that I am not
15 financially or otherwise interested in the outcome of
16 the action.

17 Certified to by me on this, the 1st day
18 of March, 2023.

19
20

VANESSA J. THEISEN, Texas CSR, RPR

21 Texas Cert No. 3238

Expiration Date: 10/31/23

22 Integrity Legal Support Solutions

Firm Registration No. 528

23 9901 Brodie Ln., Ste. 160-400

Austin, Texas 78748

24 (512) 320-8690

www.integritylegal.support

25